

Enclosure 2

Elk River and Freshwater Creek Channel Modification Scoping Meeting December 2, 2003

On December 2, 2003, staff from the North Coast Regional Water Quality Control Board (Regional Water Board) met in Eureka with staff from a number of local, state and federal agencies to discuss permit requirements for potential channel modifications in Elk River and Freshwater Creek.

Agency representatives in attendance were:

- Holly Lundborg, Matthew Buffleben, Adona White; Regional Water Board
- David Hull; Port of Humboldt Bay (Harbor District)
- Kelley Reid; Army Corp of Engineering
- John Clancy, Chuck Glasgow; NOAA-Fisheries
- Michael Wheeler; Humboldt County Planning
- Mark Wheatley, Michele Gilroy; Department of Fish and Game

Agencies that were notified but unable to send staff include:

- the California Coastal Commission
- the State Lands Commission.

Staff from both agencies expressed an interest in continuing dialogue with Regional Water Board staff on this issue.

Suggestions were made by various representatives to include additional agencies and individual staff to the agency participant list. Additional names and agencies included:

- Jim Watkins, USFWS
- Ann Glubczuinski, Humboldt County Public Works
- Don Tuttle, Humboldt County Public Works
- Randy Klein, County of Humboldt Extraction Review Team (CHERT)
- Mark Stopher, Department of Fish and Game
- Staff from Office of Emergency Services

Background on Channel Modification

By October 29, 2003, the Regional Water Board received a petition signed by sixty-four residents of the Elk River watershed requesting the Regional Water Board order Pacific Lumber Company to dredge the low gradient reaches of Elk River below Pacific Lumber Company's ownership as a means of reducing flooding in the watershed.

At the November 2003 Regional Water Board meeting, the Board directed staff to investigate options available to lessen the intensity and frequency of flood events affecting homes, agricultural fields, roads, and bridges in the two watersheds. Channel modification options included dredging, sediment retention basin construction and removal of channel obstructions as described in the Humboldt Watersheds Independent Scientific Review Panel Phase I Report

(Dec. 27, 2002). This direction to staff was re-affirmed by the Regional Water Board at their December 3, 2003 meeting.

Meeting Summary

This first scoping meeting began with a discussion by Regional Water Board staff on the background leading up to the meeting, including discussion of the petition, options described in the Phase I Report and two broad proposals for channel modifications, as shown on the attached topographic maps. These maps were provided to illustrate the range of potential options available for agency discussion and consideration.

Some discussion occurred relative to the petition and the nature and designation of “emergencies”. Legal requirements to meet the definition of “emergency” under the federal Endangered Species Act and Clean Water Act would seem to prevent the emergency declaration being assigned in the case of flooding in these two watersheds as the findings of “imminent lost of life and/or property” and “unforeseeable” do not apply.

Time issues were discussed at length. Estimates for time needed to scope options, develop proposals and receive appropriate local, state and federal permits could take five years or more to obtain.

The need for the channel modification project to comply with both the state California Environmental Quality Act (CEQA) and the federal National Environmental Protection Act (NEPA) was also discussed. There seemed to be universal agreement that a joint CEQA/NEPA permit and noticing process should be undertaken. Regional Water Board could act as the lead agency under the CEQA portion with a federal agency providing the federal lead agency authority, since the federal Environmental Protection Agency has not delegated lead authority for NEPA to the Regional Water Boards. If a federal permit is obtained through the Army Corps, they will act as the Federal nexus to NOAA-Fisheries. The Regional Board could provide the Army Corp with a Biological Assessment (BA) (including current utilization, affect on species, and potential aftermath). Army Corps would give the BA to NOAA-Fisheries for input. If a joint CEQ/NEPA document were pursued, a County Coastal Permit would require findings demonstrating no other less damaging alternative exists. In any case, the analysis would have to emphasize the suite of alternatives and associated impacts and benefits over time.

DFG and the Army Corps are currently working on dredging permit in the Salt River in which flooding and flood damage has been documented. As a result, the Office of Emergency Services (OES) declared an emergency based upon a threshold of damage incurred by property owners. The OES declaration made the property owners to eligible for specific funding sources; pre-emergency funding for landowners may also be available through OES. For OES to become involved, the Board of Supervisors can request their assistance. The Salt River has no listed species, but the Army Corps is still required to develop an EIS under the Section 206 Ecosystem Restoration Program. They are one-year into the project and anticipate another three years prior to commencing dredging.

Two broad proposals were shown as illustration of Regional Water Board staff's first scoping of dredging scenarios. Based on the two proposals shown, it appears that a permit would not be required by the Harbor District as the channel modifications would occur above their jurisdiction in the watershed. Their jurisdiction is below the proposals shown by Regional Water Board staff. In Elk River their jurisdiction extends to the DFG property and barn and extends to 3-Corners in Freshwater Creek. However the Harbor District would want a long-term monitoring program associated with the project, which could easily be established as part of the TMDL.

It was mentioned that there may be a way to partner with DFG staff within their ongoing watershed assessment program as Humboldt Bay is the next scheduled assessment. Scott Downey would be the contact. Additionally, perhaps Federal Emergency Management Agency (FEMA) money could be made available. Some stakeholders may respond negatively if public money is used for the project.

Regional Water Board staff agreed to summarize the meeting, draft a preliminary scope of work and schedule a next meeting for January 2004 in the Eureka area.